IN THE COURT OF APPEALS OF IOWA

No. 3-1218 / 13-0579
Filed January 23, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DALE EDWIN STRINGER,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

A defendant appeals the district court's denial of his application to remove sex offender treatment as a condition of his probation. **REVERSED.**

Judith O'Donohoe of Elwood, O'Donohoe, Braun, & White, LLP, Charles City, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Peter Blink, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

MULLINS, J.

Dale Stringer appeals the court's denial of his application to remove the requirement that he complete sex offender treatment as a condition of his probation. Stringer pled guilty to prostitution, in violation of Iowa Code section 725.1 (2011), following a police sting operation where Stringer offered an undercover police officer $40 for sex. He was sentenced to 365 days in jail, that sentence was suspended, and he was placed on probation for two years. Stringer contends the crime of prostitution is not a sex offense under section 692A.102, and his criminal history does not justify the imposition of sex offender treatment as a condition of his probation.

The State did not file a resistance to Stringer's application, and it does not appear that it offered any evidence in support of the sex-offender-treatment condition at the unreported hearing. The district court denied the application finding sex offender treatment "will promote rehabilitation of the defendant or the protection of the community" and is "reasonably related to the offense involved." The court went on to say that "[w]hile prostitution is not classified as a sexually violent offense under Iowa law, it is sexual in nature. Further, defendant does have a false imprisonment conviction stemming from a sexual encounter. In addition, defendant's psychological evaluation describes a number of other prostitution-related encounters." The court concluded by finding a nexus between the present conviction and the sex offender treatment as a condition of probation.

"[T]rial courts have a broad discretion in probation matters which will be interfered with only upon a finding of abuse of that discretion." *State v. Valin*, 724 N.W.2d 440, 444 (Iowa 2006). "'[O]ur task on appeal is not to second-guess the decision made by the district court but to determine if it was unreasonable or based on untenable grounds.'" *Id*. at 445 (quoting *State v. Formaro*, 638 N.W.2d 720, 725 (Iowa 2002)). We will find an abuse of discretion "when 'there is no support for the decision in the . . . evidence.'" *Id*. (quoting *Rath v. Sholty*, 199 N.W.2d 333, 336 (Iowa 1972)).

Our courts are empowered to impose reasonable probation conditions that promote the rehabilitation of the defendant or protect the community. *Id*. at 445–46. This condition is satisfied if the condition of probation addresses some problem or need of the defendant, or some threat posed by the defendant. *Id*. at 446. "A condition is reasonable when it relates to the defendant's circumstances in a reasonable manner and is justified by the defendant's circumstances." *Id*. (internal citations omitted).

In support of his application to have the sex-offender-treatment condition removed, Stringer submitted a psychological evaluation report completed by Dr. Luis Rosell.[1] In the criminal history section of the report, Stringer recounted an incident in 1979, when he had a woman in his car. He stated that they did not have sex that night but had had sex before. When the woman got home late,

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[1] The State asserts Stringer has waived his claim by failing to make his conditions of probation part of the record. While we do not have the probation agreement, we do have the district court's written ruling along with Stringer's application and the psychological evaluation he submitted in support of his application. We find this record adequate to address the claim, and therefore, we reject the State's waiver argument.

she told her mother that Stringer had tried to rape her. Stringer was charged with rape and kidnapping, but he asserted the woman told the truth in court that she was never threatened with a knife, and the charge was dropped to false imprisonment. He served one year in jail, which Stringer claimed "was the best thing to happen to me" because he "stopped using drugs, drank less, and stopped carrying a knife."

In addition, Stringer asserted in 1982 that a woman accused him of rape, but the charges were dropped when it was later discovered she was trying to get a free car from the car dealership Stringer was working for at the time. Stringer also admitted to using prostitutes throughout his life.

Dr. Rosell administered a personality inventory and reached the conclusion that

> to require him to attend sex offender treatment based on charges from thirty years ago or an interest in being with prostitutes is not indicated. Men have been paying for sexual favors since the beginning of time. This behavior may not be moral but it is not a sexual offense nor should men who choose to engage in these behaviors be treated as one.

The evaluation noted Stringer admitted to having an addictive personality. "However, to place him in a program of sex offenders with a variety [of] different issues is not to Mr. Stringer's benefit." Dr. Rosell went on to say that "if treatment is to be conducted it should be individual therapy to address his tendency towards addictive behaviors and not the current treatment regiment that is being prescribed."

The current offense of prostitution, while sexual in nature, is not among the offenses the legislature chose to list as sex offenses in section 692A.102. As

noted by Dr. Rosell, men have been paying for sexual favors since the beginning of time.

More than thirty years ago, Stringer was convicted of false imprisonment. Although he had been accused of rape on two occasions, one of those charges was dismissed completely and the other one was dropped down to false imprisonment. The district court found the thirty-year-old conviction of false imprisonment to be "stemming from a sexual encounter," but on the current record, which includes only Stringer's self-reported evaluation, we cannot make such a conclusion.

Based on the record before us, we cannot say that sex offender treatment "relates to the defendant's circumstances in a reasonable manner and is justified by the defendant's circumstances." *Valin*, 724 N.W.2d at 446, 449 (finding the trial court abused its discretion by imposing sex offender treatment as a condition of probation on a defendant convicted of operating while intoxicated where the defendant had a prior conviction for assault with intent to commit sexual abuse but had already successfully completed sex offender treatment as part of the prior conviction); *State v. Jorgensen*, 588 N.W.2d 686, 687 (Iowa 1998) (finding the trial court abused its discretion when it imposed a batterer's treatment program as a condition of probation on a defendant who was acquitted of domestic abuse and had no prior history of such conduct). We conclude that the court abused its discretion when it refused to remove the Department of Correctional Services' requirement of sex offender treatment programming as a condition of Stringer's probation.

We therefore reverse the district court's decision imposing sex offender treatment as a condition of Stringer's probation.

REVERSED.